IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO.117/1993
(Umaid Singh Vs. State)

Date of order : 21.08.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Vineet Jain, for the petitioner.
Mr. Vishnu Kachwaha, Public Prosecutor.

Heard learned counsel for the parties.

By way of filing the present revision petition, the petitioner has challenged the judgment dated 13.4.1993 passed by Sessions Judge, Sirohi in Criminal Appeal No.13/1991 confirming the conviction and sentence recorded by Munsif & Judicial Magistrate, Sheoganj vide order dated 27.3.1991 in Criminal Original Case No.279/87 whereby the trial court convicted the petitioner for offence under Section 304-A I.P.C. and sentenced him to undergo two years SI alongwith fine of Rs.5,000/- and in default of payment of fine to further undergo six months SI.

According to the facts of the case, upon information given by PW-3 Khim Singh, a case was registered at police Station Sheoganj on 7.10.1987 at about 8.40 a.m. for offence under Sections 304-A and 279 I.P.C. According to informant, when he was proceeding from Sumerpur to Sheoganj, he noticed that a truck bearing No.RRN 5693 was proceeding towards Sumerpur. At that time, one lady, who was crossing the road and was going to temple of Santoshi-mata, collided with left wheel of the said truck and as a result of which, she fallen down on the road and left-side front wheel of the truck passed over her body. According to the informant, he reached on spot and made an enquiry with regard to truck driver, then, he came to know that petitioner – Umaid Singh was driving the said truck and Smt. Mohni Devi died on spot. Upon this FIR, after investigation, challan was filed and ultimately after trial, the petitioner was convicted and sentenced as above by the trial Court.

Learned counsel for the petitioner argued that this case is totally based upon the testimony of PW-3 Khim Singh, who is author of FIR also and upon perusal of his statement, it is clear that he has not attributed any negligence on the part of the driver. It is also pointed out that it is specifically stated in the statement by PW-3 Khim Singh that at the time when occurrence took place, speed of truck was 20 to 25 Kilometer per hour. It is also pointed out that in

whole of his statement, it is nowhere stated by him that the petitioner was driving the vehicle negligently, therefore, the main ingredients for constituting offence under Section 304-A I.P.C. are missing in the present case. There is no allegation in the entire set of evidence with regard to negligent driving by the petitioner, therefore, the learned trial Court as well as learned appellate Court has committed an error while not appreciating this aspect of the matter and wrongly convicted the petitioner for offence under Section 304-A I.P.C.

Learned counsel for the petitioner argued that according to site-plan, the prosecution story cannot be treated to be proved because the site-plan is totally contrary to the version mentioned in the FIR.

Learned counsel for the petitioner has invited the attention of this Court towards the fact that in the statement of PW-3 Khim Singh, which is relied upon by learned trial Court as well as appellate Court, he himself has stated that he named Umaid Singh (petitioner) because he came out from the vehicle from the side of driver, therefore, in absence of any allegation of negligence on the part of the petitioner, the convicted of the petitioner is illegal and contrary to the evidence on record. It is also argued that it is true that in the said accident one

Smt. Mohini Devi died but it is also similarly admitted fact, which clearly emerges from the perusal of evidence that not a single witness gave his statement before the Court that this accident took place due to rash and negligent driving of the petitioner. When specific assertion is made in the statement that upon the national high-way, the petitioner, who was alleged to be driver of truck was driving the vehicle at the speed of 20 to 25 kilometer per hour, then, it cannot be said that he was driving the vehicle with rashness and negligently. Therefore, the learned trial Court as well as learned appellate Court has committed an error while not appreciating the material facts of the case and wrongly convicted the petitioner for the alleged offence.

It is also contended by the learned counsel for the petitioner that in the statement of petitioner recorded under Section 313 Cr.P.C., he has specially mentioned that at the time of occurrence, he was not driver of the vehicle and in fact one Kheta Ram was driver of the vehicle, therefore, he has wrongly been convicted by learned trial Court and so also the appellate Court has wrongly appreciated the evidence and maintained the conviction of the petitioner. Hence it is prayed that the petitioner may be acquitted from the charges levelled against him because there is no evidence on record with regard to rash and negligent driving, which is essential

ingredient for offence under Section 304-A I.P.C.

On the other hand, learned Public Prosecutor vehemently opposed the prayer made by the learned counsel for the petitioner and argued that learned trial Court as well as learned appellate Court has rightly considered the veracity of the evidence and further, the statement of PW-3 Khim Singh cannot be discredited merely on the ground that the speed of the vehicle was low. It is also argued by learned Public Prosecutor that it is the duty of every driver, who is driving vehicle upon national high-way to drive the vehicle carefully and to see that no accident takes place due to his rashness and negligent driving but in this case admittedly a lady died due to accident by a truck, which was being driven by the petitioner, therefore, the learned trial Court as well as appellate Court has rightly convicted the petitioner for offence under Section 304-A I.P.C.

Learned Public Prosecutor also apprised this Court that PW-3 Khim Singh is an independent witness and he has narrated the incident which took place at the time of accident. Thus it is pure and actual statement with regard to occurrence, therefore, the credibility of this witness cannot be questioned and the learned trial Court as well as learned Appellate Court has rightly accepted the testimony of this witness. Thus, it is prayed that no interference is

required by this Court in the impugned judgments rendered by learned trial Court and affirmed by learned appellate Court.

I have considered the rival submissions made by both the parties and perused the entire record of the case. It is true that at the time of exercising revisional jurisdiction when concurrent findings are on record, the revisional Court should not re-appreciate the findings but at the time of adjudicating the matter upon legality and propriety of the judgment while exercising revisional jurisdiction, it is the duty of the Court to see whether the learned Court below has rightly appreciated the evidence or not. In the present case, it is required to ascertain whether main ingredients of offence under Section 304-A and 279 I.P.C. are existing or not. Upon perusal of statement of PW-3, who is author of FIR, it is clear that he has proved that accident took place on 7.10.1987. He has also proved that after accident, FIR was lodged by him and upon the said FIR, investigation took place. Upon appreciation of the site-plan also, it is clear that version of PW-3 is fully corroborated, therefore, the testimony of PW-3 cannot be disbelieved. Thus, the question arises whether there is any rashness or negligence attributable to the petitioner. In this regard, though it is not specifically stated by PW-3 Khim Singh that the petitioner was driving the vehicle with

rashness or negligence but from the facts it can be gathered that the vehicle was going through the national high way, therefore, for saving the human life, it was the duty of driver to take all possible measures to protect human life. If there is any lack on his part, the same can be termed as negligence; may not be specifically stated by the prosecution witness but it can be gathered from the facts and circumstances narrated by eye witness. Therefore, it cannot be said that there was any negligence on the part of deceased Smt. Mohini Devi but it can very well be said that due to lack of action, which can be termed as negligence has been committed by the petitioner.

Learned counsel for the petitioner has invited the attention of this Court towards the judgment rendered by Hon'ble Apex Court in case of Mahadeo Hari Lokre Vs. State of Maharashtra, reported in AIR 1972 SC 221 as well as the judgment rendered by this Court in case of Hans Raj Vs. State of Rajasthan, reported in 1999 (2) RCD 881.

As discussed above, it is obvious that there was lack of driving on the part of the petitioner, which can be termed as negligence; may not be of serious nature, but it was a negligence for which, in my opinion, it is appropriate to reduce the sentence awarded to the petitioner from two years to already

undergone. The petitioner remained in custody for near-about one month. Thus, in the interest of justice and while appreciating the entire evidence, this revision petition is partly allowed and while upholding the conviction awarded to the petitioner by learned trial Court vie judgment dated 27.3.1991 and affirmed by learned appellate Court vide judgment dated 13.4.1993, the sentence awarded to him is reduced from two years to already undergone. The petitioner is on bail. His bail bonds are forfeited.

(GOPAL KRISHAN VYAS), J.

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